DOCUMENT RESUME

ED 307 454 CE 052 573

TITLE	Age Discrimination. Use of Waivers by Large Companies Offering Exit Incentives to Employees. Report to Congressional Requesters.
INSTITUTION	General Accounting Office, Washington, D.C. Div. of Human Resources.
REPORT NO	GAO/HRD-89-87
PUB DATE	Apr 89
NOTE	16p.
AVAILABLE FROM	U.S. General Accounting Office, P.O. Box 6015, Gaithersburg, MD 20877 (first five copies free; additional copies: $2.00 each; 100 or more: 25% discount).
PUB.TYPE	Reports - Research/Technical (143)
EDRS PRICE	MF01/PC01 Plus Postage.
DESCRIPTORS	*Age Discrimination; Court Litigation; *Early Retirement; Employer Attitudes; Equal Opportunities (Jobs); *Incentives; *Older Adults; *Retirement Benefits
IDENTIFIERS	*Age Discrimination in Employment Act 1967; *Waivers

ABSTRACT

A study reviewed Fortune 100 companies' use of waivers that release employers from certain legal claims under the Age Discrimination in Employment Act of 1967 in special short-term exit incentive programs offered to employees. These programs were designed to encourage employees' early departure through some form of financial incentive. Telephone interviews were conducted with company officials at a random sample of 71 of the 1987 Fortune 100 industrial companies. Findings indicated that about 80 percent of Fortune 100 companies sponsored an exit incentive program at least once during 1979 through 1988, according to company officials. About 30 percent of these companies required their employees to sign a waiver as a condition for receiving enhanced benefits. Overall, waiver usage increased during the years 1985-1988 and was highest in 1987 and 1988, when 35 percent of companies with exit incentives used them. Officials from companies that required waivers said such a practice protected the company from lawsuits. Companies not using waivers contended that they were unnecessary because of the voluntary nature of exit incentive programs and the adverse effect that waivers would have on employee relations. (Appendixes include interview and data verification procedures and companies' reasons for waiver choices.) (YLB)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

GAO

United States General Accounting Office

Report to Congressional Requesters

April 1980

AGE DISCRIMINATION

Use of Waivers by Large Companies Offering Exit Incentives to Employees

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☑ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

GAO

United States
General Accounting Office
Washington, D.C. 20548

Human Resources Division

B-234436

April 18, 1989

Congressional Requesters:[1]

On January 19, 1989, you asked us to review Fortune 100 companies' use of waivers that release employers from certain legal claims under the Age Discrimination in Employment Act of 1967 (ADEA) in special short-term exit incentive programs offered employees. These programs are designed to encourage employees' early departure through some form of financial incentive.

Some companies require each participating employee to sign a waiver form in exchange for receiving enhanced benefits from exit incentive programs. Generally, signing a valid waiver form means an employee relinquishes the right to file an age discrimination suit against the employer. A waiver is not valid unless it is signed voluntarily and with knowledge that ADEA rights are being forfeited.

Waivers used in exit incentive programs are private agreements between an employee and employer. As private agreements, they are considered unsupervised because neither the government nor courts monitor whether employees voluntarily sign them and are aware of the rights they forfeit.

Information on waiver practices should be useful to the Congress as it deliberates proposed legislation designed to restrict the use of unsupervised waivers of ADEA rights. There has been congressional concern about the use of these waivers primarily because of (1) reports that some older workers may have been coerced into signing waivers or may have done so without knowing that they were being asked to give up their ADEA rights and (2) publication of a now-suspended regulation by the Equal Employment Opportunity Commission (EEOC) that would have permitted unsupervised waivers under certain circumstances. Furthermore, some members of Congress believe that employees should never be required to forfeit their ADEA rights in return for enhanced benefits.

On March 16, 1989, we testified before the Subcommittee on Labor of the Senate Committee on Labor and Human Resources on preliminary results of our work. This report expands on the information contained in the testimony.

[1]See appendix I for a list of the requesters.

Results in Brief

About 80 percent of Fortune 100 companies sponsored an exit incentive program at least once during 1979 through 1988, according to company officials. About 30 percent of these companies required their employees to sign a waiver as a condition for receiving enhanced benefits. Overall, waiver usage increased during the years 1985-88 and was highest in 1987 and 1988, when 35 percent of companies with exit incentives used them.

Officials from companies that required waivers said such a practice protected the company from lawsuits. Companies not using waivers contended that they were unnecessary because of the voluntary nature of exit incentive programs and the adverse effect that waivers would have on employee relations.

Background

In recent years, mergers, competition from abroad, or a general decline in sales has caused many companies to reduce their operations. To curtail employment, companies sometimes use short-term exit incentive programs that give employees the option to leave voluntarily. According to a recent study, about 55 percent of a sample of large companies (25,000 or more employees) offered such programs at least once between 1981 and 1985.[2]

Company exit incentive programs can include various kinds of enhanced benefits. These include (1) additional credits that enhance early retirement benefits under the company pension plan or (2) some other specially designed incentives, such as cash bonuses, not connected to the pension plan (nonpension benefits) or (3) both.

Requiring employees to waive their legal right to file claims and lawsuits against the firm as a condition for receiving enhanced benefits has concerned many. The Congress and groups representing the elderly are particularly concerned about workers 40 and older being asked to waive their rights to file age discrimination claims under ADEA. There also has been concern because these waivers are unsupervised.

Whether unsupervised waivers of ADEA rights are permitted under the act is not clear. Neither ADEA nor its legislative history specifically addresses whether waivers are allowed at all and, if so, how they are to

[2]Hewitt Associates, Plan Design and Experience in Early Retirement Windows and in Other Voluntary Separation Plans, 1986.

be executed. However, several courts have held that these waivers are valid if signed knowingly and voluntarily.

In August 1987, EEOC, which enforces ADEA, published a final regulation permitting unsupervised ADEA waivers under certain circumstances. However, soon thereafter the Congress passed legislation that directed EEOC to suspend the regulation. This legislation will expire at the end of September 1989. In the interim, several congressional hearings have focused on the waiver issue, and legislation has been proposed.

Proposed legislation, the Age Discrimination in Employment Waiver Protection Act of 1989 (S. 54 and H.R. 1432), would, among other things, permit unsupervised waivers only when an employee is settling a charge with EEOC, is settling a lawsuit against the employer, or has filed a written allegation of age discrimination with the employer. In such instances, the employee has counsel; therefore, the waiver is considered to be signed knowingly and voluntarily.

Objectives, Scope, and Methodology

In reviewing the waiver practices of the Fortune 100 companies, we sought to determine

- the use of exit incentive programs sponsored from 1979 through 1988,
- the number of companies sponsoring exit incentive programs that included waivers as part of incentive offers,
- general characteristics of waivers companies used, and
- the factors that influenced companies' decisions on whether or not to use waivers.

We also obtained limited information on the number of workers who left companies through exit incentive programs. As our focus was on companies, we gathered participant data only if readily available. Complete data on workers' participation in exit incentive programs were not generally available from all our surveyed companies.

To accomplish our objectives, between February 9 and March 31, 1989, we conducted telephone interviews with company officials at a random sample of 71 of the 1987 Fortune 100 industrial companies. We chose 1987 because at the time we conducted our review, Fortune had not published its listing of the top industrial companies for 1988.

The officials were asked if the company had sponsored an exit incentive program in any of the 10 years. If so, we recorded the year(s) in which

the company had at least one program. We also asked whether the company used a waiver in any of the years it sponsored an exit incentive program. We recorded one occurrence of a waiver even if the company had more than one exit incentive program with a waiver during a particular year.

Our results on exit incentive programs companies sponsored and the use of waivers are representative of the Fortune 100 companies in 1987, which in that year employed 8.3 million workers. Because companies in the Fortune listings may change from one year to the next, our findings may not be representative of the Fortune 100 companies for other years.

Because of congressional concern about the impact of waivers on the rights of older workers, we requested copies of the waiver forms from the 16 Fortune 100 companies in our sample that used them. For the nine forms we received, we analyzed them to determine whether they contained explicit language informing employees that they were releasing companies from age discrimination claims. The results of our review, which pertain to only these nine forms, cannot be projected.

We used a combination of steps to verify the accuracy of the information obtained in the interviews. To obtain details on each exit incentive program, we requested copies of documents containing these provisions. Furthermore, we obtained copies of waiver forms to verify reports that companies asked their employees to sign them. (For details on our interview and verification procedures, see app. II.) We interviewed EEOC officials to obtain background information on unsupervised waivers and to better understand the agency's reasons for issuing its regulation.

Our review was performed in accordance with generally accepted government auditing standards. We did not obtain formal agency comments on this report because we were not reviewing specific agency programs or functions. However, we discussed its contents with EEOC officials and made changes where appropriate.

Most Fortune 100 Companies Sponsored Exit Incentive Programs

We estimate that about 80 percent of Fortune 100 companies sponsored an exit incentive program at least once between 1979 and 1988. About 61 percent of these did so in more than 1 year.

Of companies that sponsored exit incentive programs during the 10-year period, in any 1 year, an average of about 36 percent offered only enhanced early retirement benefits under the company's pension plan.

An average of about 35 percent offered early retirement benefits in combination with other types of benefits not related to the company's pension plan. About 29 percent of companies offered only nonpension benefits in the years they sponsored exit incentive programs.

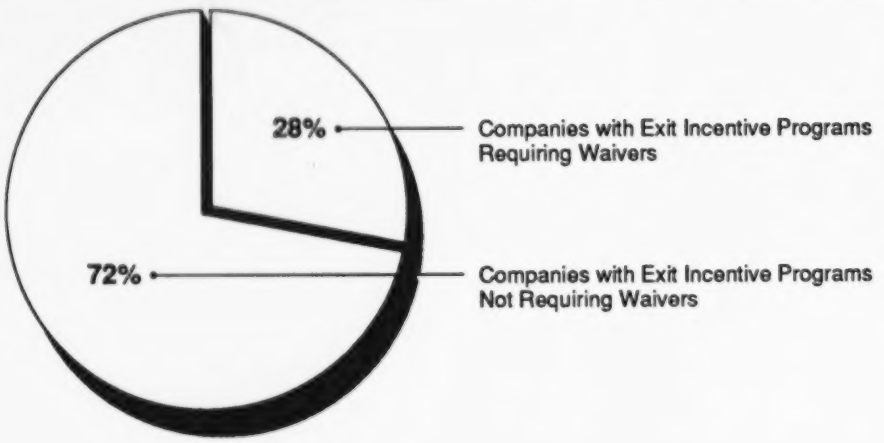
Among companies that offered enhanced early retirement benefits at least once during the 10-year period, about 51 percent liberalized pension plan provisions by adding years to each worker's age and/or years of service. This enabled employees to become eligible for retirement sooner than they otherwise would have and to get a greater pension amount than they would have received had their actual age and years of employment been used to calculate benefits. Other enhancements companies made to pension plans included (1) the elimination or reduction of early retirement adjustments that decrease the pension benefit below what would have been received at normal retirement and (2) bridge payments that last until employees are eligible to receive social security benefits at age 62.

The nonpension exit incentives Fortune 100 companies used took a variety of forms—ranging from lump sum payments to continuing to pay employees' salaries for some period after they leave. Of the companies sponsoring these incentives, about 57 percent offered employees salary continuance based on their service with the company.

Most Fortune 100 Companies Did Not Use Waivers

Most of the Fortune 100 companies sponsoring at least one exit incentive program between 1979 and 1988 did not ask employees to sign waivers in exchange for receiving enhanced benefits. We estimate that about 28 percent of these companies used waivers at least once, as shown in figure 1.

Figure 1: Waiver Usage by Fortune 100 Companies With Exit Incentive Programs (1979-88)


28%
Companies with Exit Incentive Programs Requiring Waivers
72%
Companies with Exit Incentive Programs Not Requiring Waivers

Between 1979 and 1988, the use of waivers increased, although they still were used by only a minority of companies. As shown in figure 2, between 1979 and 1984, an average of less than 20 percent of companies used waivers in a year, but usage increased after 1984. During the 2-year period 1987-88, when we estimate waivers were used the most, 35 percent of companies with exit incentive programs used them.[3]

The nine waiver forms we reviewed varied in how completely and clearly they explained the specific rights that employees were giving up by signing these agreements. Nevertheless, all nine waivers contained language that informed employees that they were releasing the company from all age discrimination claims.

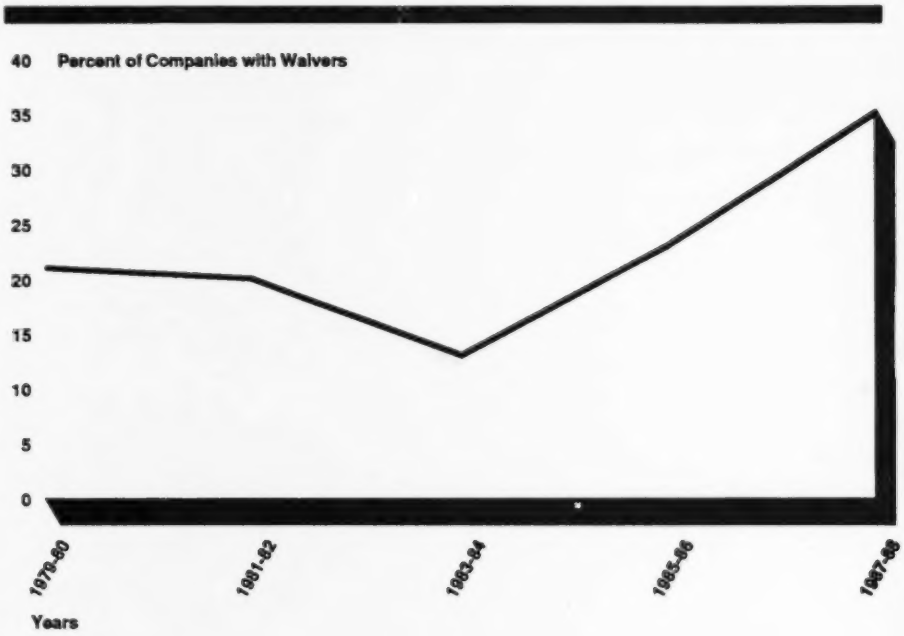
We also asked company officials about the factors influencing the decision to use waivers. Generally, officials said their companies used waivers to avoid having terminated employees file claims and lawsuits after receiving enhanced benefits from exit incentive programs.

Companies not using waivers took this course believing that no claims or lawsuits would be filed given the voluntary nature of their exit incentive programs, according to company officials. They also said they believed that using waivers would have negatively affected their relationship with current employees. Requiring a waiver would have raised

[3]Some companies may have sponsored an exit incentive program with a waiver in both 1987 and 1988.

suspicion about the integrity of the exit incentive program and the company's intent, one company representative told us. (For more information on companies' reasons for not using waivers, see app. III.)

Figure 2: Trends in Waiver Usage in Fortune 100 Companies With Exit Incentive Programs (1979-88)



Selected Data on Participants

The companies we surveyed had at least 198,281 employees electing to leave through exit incentive programs between 1979 and 1988. Of these employees,

- about 47 percent left with enhanced early retirement benefits,
- about 14 percent were required to sign waivers in order to receive enhanced benefits under any type of incentive program, and
- about 5 percent signed waivers to receive enhanced early retirement benefits.

We are sending copies of this report to interested Senate and House Committees, and we will make copies available to others on request. Major contributors to this report are listed in appendix IV.

Joseph F. Delfico

Joseph F. Delfico
Director of Income Security Issues
(Retirement and Compensation)

Contents

Letter 1

Appendix I Congressional Requesters 12

Appendix II Interview and Data Verification Procedures 13

Appendix III Companies' Reasons for Waiver Choices 14

Appendix IV Major Contributors to This Report 15

Figures

Figure 1: Waiver Usage by Fortune 100 Companies With Exit Incentive Programs (1979-88) 6

Figure 2: Trends in Waiver Usage in Fortune 100 Companies With Exit Incentive Programs (1979-88) 7

Abbreviations

ADEA	Age Discrimination in Employment Act of 1967
EEOC	Equal Employment Opportunity Commission

Congressional Requesters

The Honorable Edward M. Kennedy
Chairman, Committee on Labor and Human Resources
United States Senate

The Honorable Howard M. Metzenbaum
Chairman, Subcommittee on Labor
Committee on Labor and Human Resources
United States Senate

The Honorable John Heinz
Ranking Minority Member
Special Committee on Aging
United States Senate

The Honorable Augustus F. Hawkins
Chairman, Committee on Education and Labor
House of Representatives

The Honorable Matthew G. Martinez
Chairman, Subcommittee on Employment Opportunities
Committee on Education and Labor
House of Representatives

The Honorable William Clay
Chairman, Subcommittee on Labor-Management Relations
Committee on Education and Labor
House of Representatives

The Honorable Claude Pepper
Chairman, Committee on Rules
House of Representatives

The Honorable Edward R. Roybal
Chairman, Select Committee on Aging
House of Representatives

The Honorable Olympia J. Snowe
Select Committee on Aging
House of Representatives

Interview and Data Verification Procedures

Between February 9 and March 31, 1989, we interviewed officials at a random sample of 71 Fortune 100 companies using a standardized interview guide. The interview elicited information from companies about (1) exit incentive programs sponsored during 1979 through 1988 and whether waivers were part of incentive offers and (2) the factors influencing employers' decisions to use waivers.

We asked our questions of knowledgeable officials, generally in companies' employee benefits departments and legal offices. Specifically, we asked the companies

- whether they sponsored any exit incentive programs during 1979 through 1989 and, if so, when;
- what types of exit incentive programs they sponsored (e.g., enhanced early retirement, nonpension exit incentives, or both) and what the general provisions were;
- whether they asked employees to waive all claims against the company in exchange for receiving benefits and, if so, when;
- the major reason(s) they did or did not include a waiver as part of exit incentive offers; and
- how many employees elected to participate in the program.

After pretesting the survey instrument with four companies, we noted any difficulties respondents had in answering questions and changed the survey instrument accordingly.

We conducted a set of checks to verify the accuracy of telephone responses. Substantive data, such as the prevalence and features of exit incentive programs and the existence of waivers, were verified against documentation employers provided.

Companies' Reasons for Waiver Choices

The following are some of the reasons given by representatives of the companies we surveyed for using or not using waivers in connection with their exit incentive programs.

Companies With Waivers

Companies using waivers generally said that the company wanted to protect itself from lawsuits or claims by former employees. One company official added that the company was "saving younger people's jobs."

Companies Without Waivers

The reasons given most often by officials in companies that chose not to use waivers were that "the program was voluntary" (8 companies), "waivers are bad for employee relations" (8 companies), and "no lawsuit was anticipated" (7 companies). Some of their additional comments included:

- ". . . uncertainty as to the legal standing of waivers."
- ". . . insulting to employees."
- "Waivers wouldn't make any difference. Employees could still sue the company."
- "Waivers were not necessary because the program was strictly voluntary. The company counseled people on the details, including giving them instructions for computing benefits."
- "The program was voluntary: not performance-based separation."
- "Each employee who thinks he or she might want to participate is counseled."
- "Because the program was such a good deal the company did not think they would have problems."
- "We offered the program to everyone eligible to retire and did not establish separate classes of employees."
- "Downsizing is a legitimate business operation . . . there is no need for waivers."

Major Contributors to This Report

Human Resources Division, Washington, D.C.	Joseph F. Delfico, Director of Income Security Issues (Retirement and Compensation), (202) 275-6193 Burma H. Klein, Assistant Director Donald C. Snyder, Assignment Manager Glenn G. Davis, Evaluator-in-Charge Sheila R. Nicholson, Evaluator
Office of the General Counsel, Washington, D.C.	Dayna K. Shah, Assistant General Counsel

Requests for copies of GAO reports should be sent to:

U.S. General Accounting Office
Post Office Box 6015
Gaithersburg, Maryland 20877

Telephone 202 275-6241

The first five copies of each report are free. Additional copies are $2.00 each.

There is a 25% discount on orders for 100 or more copies mailed to a single address.

Orders must be prepaid by cash or by check or money order made out to the Superintendent of Documents.